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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of  
PETITION TO AMEND  
RULES 34(b)(1)(D) and (f)(1)(B)  
Rules of the Supreme Court

Supreme Court No. R-16-0042

**Comment in Support of Petition  
to Amend Arizona Supreme Court  
Rules 34(b)(1)(D) and (f)(1)(B)**

Pursuant to Rule 28(D), Rules of the Supreme Court, the undersigned respectfully submits this Comment for the Court's consideration.

Here's how to tell whether or not applicants are qualified to sit for the Arizona bar examination: administer the exam and check the scores.

What? Like, it's hard?<sup>1</sup> If they pass, they were qualified to take it. If they don't, they weren't. Where and how they learned their law is irrelevant.

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<sup>1</sup> Elle Woods, noting her ease of being admitted to Harvard Law School. LEGALLY BLONDE (Metro-Goldwyn-Mayer 2001). Harvard, by the way, recently embraced the University of Arizona's option of using Graduate Record Examination scores in place of the LSAT. From Cambridge to Tucson, the need for a wider range of applicants outweighs slavish reliance on legacy methods. Elizabeth Olson, *Harvard Law, Moving to Diversify Applicant Pool, Will Accept GRE Scores*, N.Y. TIMES, Mar. 9, 2017 at B5.

Petitioner's proposal would benefit not only Concord Law School and its graduates, but all of us. Anything that brings indefatigable people with proven abilities and varied backgrounds to our bar is a win for Arizona. Under this proposal, we can do so without lowering our standards even a tiny bit. I support the proposal as a transitional measure. It would be a logical first step in modernizing our clunky, costly, discriminatory admissions system.

**ABA Approval Neither Guarantees Quality Nor Thwarts Weak Schools.**

Among other problems, the current process disadvantages prospective lawyers who wish to—or must—seek a solid legal education without the puffed-up pedigree of the American Bar Association. Demanding ABA approval makes little more sense than requiring all applicants to drive Packards or wear their hair in snoods. Nothing wrong with either, if done voluntarily, but hardly essential when adequate, sensibly-priced twenty-first century alternatives are so readily available.

Law schools' educational value should not be measured by how closely they conform to the musty requirements of an organization cheerfully ignored by about seventy percent of American lawyers.<sup>2</sup> Oh, and there was that unpleasantness with the consent decree. That was when the United States Department of Justice charged the ABA with misuse of accreditation procedures, then had to go back to

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<sup>2</sup> American Bar Ass'n, *National Lawyer Population Survey* (2016); ABA website, [https://www.americanbar.org/about\\_the\\_aba.html](https://www.americanbar.org/about_the_aba.html), visited Mar. 28, 2017.

court to force the ABA to perform in accordance with the remedial agreement it had accepted.<sup>3</sup> If we're looking for a paragon of pedagogic probity, we can do better. Neither the ABA nor any other external organization should have a veto power over potential Arizona attorneys.

Sure, Concord's admission standards are likely less demanding than those of most ABA-approved law schools. Sure, its bar exam pass rates in California may be low. So what? The fact that good students attended a school with below-average bar passage rates should not block those students' opportunity to prove the effectiveness of their own preparation. If Concord graduates don't have what it takes, they'll fail our bar exam. The profession and the public here will be no worse off because of the Concord students' efforts.

Yes, Concord (and some ABA-approved schools, too<sup>4</sup>) may be offering false hope to prospects who simply don't have whatever it takes to pass a bar exam. Send those students to Yale or Chicago or Berkeley and they would still fail, this thinking goes. Perhaps that's true for some, but it's not as though they would be suckered into Concord's program. Concord's bar exam pass rates would not be

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<sup>3</sup> "Justice Dept. Asks Court to Hold American Bar Association in Civil Contempt; ABA Acknowledges Consent Decree Violations and Agrees to Pay \$185,000." Dept. of Justice press release, June 23, 2006 (visited Mar. 28, 2017)

<[https://www.justice.gov/archive/opa/pr/2006/June/06\\_at\\_390.html](https://www.justice.gov/archive/opa/pr/2006/June/06_at_390.html)>

<sup>4</sup> Thirteen ABA-approved law schools had pass rates below fifty percent in 2016. Internet Legal Research Group (visited Mar. 30, 2017)

<<https://www.ilrg.com/rankings/law/4/desc/Bar>>

kept secret. Its record would be right out there with every other school's for potential students to examine. They'll know the odds.

And there's this: one of the great joys in American life is watching underrated people—those given no chance of success—fool us and succeed anyway.

### **Nontraditional Education Works.**

I have no connection with Concord. I don't know the Petitioner. I am a retired Arizona attorney who came to the law in the usual way: earned an undergraduate degree from an accredited university, graduated from an ABA-approved law school, then passed the Arizona bar examination and met the other requirements for admission to practice here.

My path was not entirely traditional, however. Like many young people, I left college early to pursue a career. Work in journalism encouraged me to attend law school, but I had no undergraduate degree. I earned one through the University of the State of New York's trailblazing programs of distance education and credit by examination, nontraditional then, but fully accredited by the appropriate regional authority. That got me into law school. It's why I respect the resourcefulness of students who find appropriate—albeit unconventional—ways to reach their goal of serving the public as attorneys.

I also had a big helping of good fortune not available to many prospective law students today. A very fine company had employed me for more than a decade; the

company shared its financial success with employees. As a result, I could afford to become a full-time law student without working while in school... and this was in an era when my public university law school tuition was only \$900 per semester. Today's students cannot depend on such luck or low cost.

For most of the last quarter-century, I have taught news media law courses at the University of Arizona School of Journalism. Some of my students have gone on to ABA-approved law schools and become attorneys. That's great. But it's now 2017, and there is no reason why the old way should be the only game in town.

Online learning is *terra incognita* to most law schools, but serious online programs are firmly established and respected in the higher education world. Today, Arizona's public universities offer online degrees in many subject areas.

INSTITUTION	UNDERGRADUATE FIELDS	GRADUATE FIELDS
University of Arizona	29	23
Arizona State University	63	57
Northern Arizona University	47	23

The names and numbers make it clear: online education is here to stay in a big way. When honestly run and properly managed, it's no fly-by-night scheme or diploma mill.<sup>5</sup> Our three excellent public universities find it sufficiently rigorous to

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<sup>5</sup> See universities' online program listings (visited Mar. 29, 2017)  
<<http://uaonline.arizona.edu>> <<https://asuonline.asu.edu>>  
<<http://ec.nau.edu/OnlineDegrees.aspx>>

confer their degrees—and thus stake their reputations—upon students who earn their credits online.

**Merit-Based Inclusiveness Is Necessary and Achievable.**

We lawyers are neither a priesthood nor a cartel. We are a learned profession that should welcome all who demonstrate their fitness. We should not impose an anachronistic arbitrary ban or limitation of online study when any worthy bar applicants can readily *prove* their preparation. A Concord candidate must pass the same bar exam and the same professional responsibility test and satisfy the same character and fitness checks applicable to everyone. Why in the modern world would we insist on ivy-covered bricks and mortar on his or her résumé?

Some beneficiaries of our current clubby restriction may harrumph, “No, no. These online barbarians will storm our gates, undercutting our tuition by offering a less ennobling, cheapie legal education.” Such a view would be alarmist. The education of a determined student, one finding new ways to conquer long odds, *is* ennobling.

We all have much to gain from such students’ efforts. As Petitioner and commenters here have explained, many applicants to Concord simply could not attend a traditional law school. Some may have been rejected by ABA-approved schools, but generally their obstacles appear to be time, money, family responsibilities, military transfers and other unique circumstances. If Concord’s

approach prepares them well enough to pass the Arizona bar exam, that should end our inquiry.

This may be hard for regulators to believe, but reduced regulation can be a step forward. Here, it allows us to expand opportunity for proven qualified students who show an abundance of grit and dedication. We should be *recruiting* such people, not rejecting them out of hand.

### **Our Entire Admissions Process Needs Fresh Thinking.**

Early in this comment, I supported a transition to more practical rules. Why, I wonder, must we require law school as the sole mode of law education? Suppose that a recent college graduate asked one of Arizona's excellent experienced lawyers—perhaps even one of the former Justices of this Court, still practicing law—for a rigorous multi-year apprenticeship in lieu of law school? Wouldn't such a fortunate student emerge with brilliant preparation for the bar exam and a deeply-imbued sense of a lawyer's ethical responsibilities? Of course. Suppose that a student took an Abe Lincoln approach, self-directed, hungrily reading law long into the night? Abe did well. What matters is the knowledge itself, not having obtained it only through some narrowly-defined educratic process.

In any event, we have no responsibility to provide full employment in perpetuity for traditional law schools. If they cannot thrive in competition with an

innovative approach, their problems may lie elsewhere. I'm betting on them to do just fine.

If we want to give our own ABA-approved in-state law schools a special place in the education process, why not implement a diploma privilege option for their graduates, perhaps with a minimum grade point average and/or core course requirement? Wisconsin has done it successfully for almost 150 years.<sup>6</sup> New Hampshire has adopted a study and apprenticeship curriculum that allows selected students at the University of New Hampshire School of Law to forego the bar exam.<sup>7</sup> An exemption from the Arizona bar exam would save our state's law graduates weeks of pointless cramming and waiting time, not to mention thousands of dollars now wasted on fees, prep courses and antacids.

If this Court wishes to set legal education standards, it can do so by providing a *benefit* to students who follow a traditional path with excellence at in-state law schools that command ongoing respect. This provides incentive to all students rather than slamming opportunity's door in the face of those who seek only a chance to prove their fitness for admission.

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<sup>6</sup> WIS. SCR 40.03 (Supreme Court Rules on Admission to the Bar; Legal Competence Requirement: Diploma Privilege) (1977).

<sup>7</sup> *Is the Bar Exam Being Phased Out?* Above the Law (visited Mar. 28, 2017) <<http://abovethelaw.com/2015/04/is-the-bar-exam-being-phased-out>>



With that goal in mind, I ask this Court to approve Petitioner's proposal. It deserves our support now, whether or not the Court later determines that further change to the admissions rules is appropriate.

Respectfully submitted,

s/ James C. Mitchell

March 31, 2017